THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

W.P.NO.18102 OF 2000

DT.31-01-2006

Between:-

Kattuboyina Ramachandra Rao,

S/o Bangariah, Devaram village,

Devipatnam Mandalam, E.G.District

And another.

...Petitioners

A n d

State of A.P. rep. by the Secretrary,

Tribal Welfare Department, Secretariat Buildings,

Hyderabad and 3 others.

.... Respondents

THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

W.P.NO.18102 OF 2000

ORDER:

This writ petition is filed questioning the order dated 18-12-1995 passed by the Special Deputy Collector, Tribal Welfare, East Godavari in L.T.R.P.No.4 of 1995, as confirmed by the third respondent in CMA.No.7 of 1996 dated 12-04-1998, and its rejection by the Government vide G.O.Ms.No.80 dated 06-09-2000.

The fourth respondent herein who was the petitioner before the Special Deputy Collector, Tribal Welfare, East Godavari District filed L.R.T.P.No.4 of 1995 seeking eviction of the respondents (petitioners herein) from their land in Sy.No.199 of Pothavaram village of Devipatnam Mandal. In the said survey

number, he claimed eviction of Ac.1-45 cents of land. It was his case before the primary authority that the petition schedule land was his ancestral property in the estate village of Pothavaram village and the same was mortgaged to one Ganga Raju, but however, the same was transferred by Ganga Raju in favour of the petitioners' father. On issuance of notice in Form '2' under the provisions of the A.P. Scheduled Area Land Transfer and Regulation 1/1959 as amended by Regulation 1/1970, the petitioners have responded to the notice and it was their case that their father purchased the petition schedule land from Mannem Ganga Raju. It was also stated the vendor of the petitioners' father purchased this land in the Government auction. They have relied on certain earlier orders of eviction which were set aside by the appellate authority on the ground that when Ryotwari patta was issued, it is implied that the transfer was not in contravention of Regulation 1/59 and its subsequent amendments.

Before the primary authority, the fourth respondent herein was examined as PW-1 and the first petitioner was examined as RW-1. With reference to the evidence on record and the rival pleas, the primary authority, without recording any finding that any transfer was effected in contravention of Regulations of the A.P. Scheduled Area Land Transfer and Regulation 1/59 as amended by Regulation 1/70, and that the petitioners claim was only 4.55 hectares in Sy.No.199 and also that the survey authorities have not responded to the query, has passed an order of eviction only on the ground that respondents are in possession of the excess land of Ac.
3-02 cents and further recorded a finding that the claim by the fourth respondent to an extent of Ac.1-45 cents is part and parcel of such excess land.

As against the order of eviction, the petitioners herein preferred an appeal before the third respondent - Agent to Government, Kakinada and third respondent dismissed the appeal. The matter was further carried in revision before the Government. The appellate authority as well as the revisional authority without examining the issue in detail have rejected the claim of the petitioners herein.

In this writ petition, it is submitted by the learned Counsel for the petitioners that when the vendor of the petitioners' father purchased, it was got surveyed and merely because the possession of the respondents is found in excess of the extent mentioned, in the absence of any violation of the Regulations, no order of eviction can be passed by an authority under the A.P. Scheduled Area Land Transfer and Regulation 1/59, as amended by Regulation 1/70. It is further submitted by the learned counsel that earlier for the entire extent of land, there was a claim before the Settlement Authority and on rejection of the same, the matter was carried in appeal before the Director of Settlement, who allowed the same, granting ryotwari patta and the said order has become final. It is submitted that when once the patta has become final, it is implied that the possession of the petitioners is not in contravention of the provisions of the A.P. Scheduled Area Land Transfer and Regulation 1/59.

On the other hand, the learned Government Pleader appearing for the respondents submits that the petitioners are in possession of the land in excess of their claim which they alleged to have purchased. In that view of the matter, the primary authority passed the order of eviction to an extent of Ac.1-45 cents and the same was also confirmed by the appellate and revisional authorities. It is further submitted that in view of the concurrent findings recorded by three authorities, no case is made out calling for interference in this writ petition filed under Article 226 of the Constitution of India.

At the outset it is relevant to note that the limited jurisdiction to the authorities under the A.P. Scheduled Area Land Transfer and Regulation 1/59 as amended by Regulation 1/70 is to examine with regard to the validity of transfers in schedule areas, to verify whether such transfers are in contravention of the provisions of the Regulation or not. As per the said Regulations, transfers were prohibited from tribals to non-tribals by Regulation 1/59 by way of a Presidential Order which came into force prospectively from 01-12-1963 and the said Regulation is extended prohibiting *inter se* non-tribals also from 03-02-70 by way of amended Regulation. In view of the scheme and object of the Regulation, unless a finding is recorded that any particular transfer is in contravention of the Regulation as referred above, no order of eviction can

be passed. Recording a finding of transfer after the Regulations came into force i s *sine quo non* for passing an order of eviction under these Regulations. Though it is the claim of the fourth respondent that transfer was in violation under Clause (3) of the A.P. Scheduled Area Land Transfer and Regulation 1/59, but no authority has recorded any finding that transfer in favour of the father of the petitioners was in contravention of the Regulation. Merely because the extent of land found in possession of the respondents is more than the extent mentioned, the same by itself is no ground to pass an order of eviction, by the authority under these Regulations.

Moreover, in this case it is to be seen that for the same area there was a claim for grant of ryotwari patta and on rejection of the claim by the primary authority, the matter was carried in appeal to the Director of Settlement who allowed the appeal and the said orders have become final. Even on earlier occasion with regard to the very same extent of land i.e., Ac.1-45 cents, where the order of eviction was passed against the claim made by some o ther tribals, the said eviction order was set aside in CMA.No.116 of 1988 dated 31-07-1992 by recording a finding that once settlement patta is issued under the Mutta Abolition Regulation 1989, it is presumed that the conditions of the A.P. Land Transfer and Regulations 1/59 have been satisfied. In this case, not only ryotwari patta was granted in favour of the petitioners, but no authority has considered the relevant issue which is required to be considered for passing an order of eviction namely whether transfer in favour of the petitioners or their father was in contravention of the Regulation or not. Even the appellate and revisional authorities simply confirmed the order of eviction, without examining valid grounds raised by the petitioners.

In this writ petition also, the fourth respondent did not appear in the matter, in spite of service of notice.

For the reasons stated above, this Court holds that the order of eviction is passed without recording findings with regard to the validity of transfer in favour of the petitioners and therefore the order of the primary authority, as

confirmed by the appellate and revisional authorities is liable to be set aside.

In the circumstances, the order dated 18-12-1995 passed by the Special Deputy Collector, Tribal Welfare, East Godavari in L.T.R.P.No.4 of 1995, as confirmed by the third respondent appellate authority in CMA.No.7 of 1996 dated 12-04-1998 and revisional authority, is hereby set aside. The application filed by the fourth respondent in L.T.R.P.No.4 of 1995 consequently stands dismissed.

Accordingly, the writ petition is allowed. There shall be no order as to costs.

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31-01-2006

Lrkm.